

United States Bankruptcy Court
Eastern District of Michigan
Southern Division

In re:

Rosa C. Hall,

Debtor.

Case No. 05-45436-R

Chapter 13

_____/

Opinion Regarding Chapter 13 Trustee's Objection to Confirmation

I.

This matter is before the Court on the Chapter 13 Trustee's objection to confirmation. This Chapter 13 case was commenced by a petition signed by the debtor's daughter, Susan Smith, pursuant to the purported authority of a written power of attorney executed by the debtor. The Trustee's objection is based on the assertion that the debtor's general power of attorney granted to the debtor's daughter does not confer the right to file a bankruptcy petition.

Smith argues that the power of attorney granted to her as the debtor's representative includes the authorization to file a bankruptcy petition on the debtor's behalf.

II.

"Although commencement of a case under the Bankruptcy Code through an attorney in fact is unusual, . . . an attorney in fact can commence a bankruptcy case so long as the debtor qualifies as a debtor under 11 U.S.C. § 109, the commencement of a bankruptcy case is within the scope of authority granted to the attorney in fact, and such action by the attorney in fact does not constitute the practice of law." *In re Hurt*, 234 B.R. 1, 2 (Bankr. D.N.H. 1999). *See also In re Brown*, 163 B.R. 596 (Bankr. N.D. Fla. 1993); *In re Gridley*, 131 B.R. 447 (Bankr. D.S.D. 1991); *In re*

Raymond, 12 B.R. 906 (Bankr. E.D. Va. 1981). Moreover, Fed. R. Bankr. P. 9010(a) authorizes the debtor to be represented by an attorney in fact so long as the attorney in fact does not perform any act which would constitute the practice of law.

A general power of attorney is insufficient to authorize an attorney in fact to commence a bankruptcy case on the debtor's behalf. *In re Curtis*, 262 B.R. 619, 623 (Bankr. D. Vt. 2001).

It is a firmly established rule, frequently reiterated, that powers of attorney are strictly construed and cannot be enlarged by construction. Accordingly, a power of attorney which specifies the acts which may be performed may not be extended by construction so as to authorize the performance of other acts not mentioned. The attorney may perform only those acts specified in the power of attorney, and the scope of his powers should be determined from a proper construction of the instrument.

Crane v. Kangas, 220 N.W.2d 172, 173 (Mich. App. 1974).

In *Curtis*, the terms of the power of attorney limited the authority to act on behalf of the debtor to make, execute and deliver any and all instruments, documents and other writings and to do, perform and otherwise transact any and all actions, acts or transactions which were necessary and convenient to the commencement, continuation or completion of the debtor's obligations. *Curtis*, 262 B.R. at 624. The power of attorney specified various types of transactions, but not litigation or bankruptcy. Further, the debtor was unwilling to participate in a bankruptcy proceeding. It was the debtor who argued that the power of attorney did not specifically permit the daughter to file bankruptcy. The court granted the debtor's motion to dismiss.

In *Hurt*, the power of attorney granted broad authority to the attorney in fact over the debtor's financial affairs and the authority to commence and prosecute and defend or settle all actions or proceedings in which the debtor had or may have any interest or concern. *Hurt*, 234 B.R. at 3-4. The court held that the broad grant of authority over financial and legal affairs included the power

to commence a bankruptcy proceeding.

Here, the debtor qualifies under 11 U.S. C. § 109 and the action taken by Smith does not constitute the practice of law since Smith is represented by counsel. Moreover, the power of attorney specifically authorizes Smith to act on the debtor's behalf with respect to all claims and litigation, as well as several other matters. These include real estate transactions, tangible personal property transactions, banking transactions, insurance transactions, gifts to charity, as well as "all other matters." The matters which are specifically not authorized by the debtor, such as business operating transactions; bond, share and commodity transactions; benefits from military service; and access to safe deposit boxes, are matters which are not relevant to the debtor because she does not own or operate a business and has no bonds, shares of stocks or commodities, military benefits, or safe deposit boxes. Additionally, unlike the debtor in Curtis, in the present case, the debtor is a willing participant. Both Smith and her attorney stated that they have spoken directly to the debtor and that the debtor is a willing participant in the bankruptcy action.

Under the law set forth and the provisions listed in the power of attorney document, Smith is authorized to file a bankruptcy petition on the debtor's behalf. Accordingly, the Court finds that the power of attorney at issue in this case is sufficient to grant authority to the debtor's daughter to commence a bankruptcy proceeding on the debtor's behalf.

The Court will enter an appropriate order.

_____/s/_____
Steven Rhodes
Chief Bankruptcy Judge

Entered: July 27, 2005

cc: Krispen Carroll
Scott Gies
Not for Publication